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9
10 IN THE UNITED STATES DISTRICT COURT
11
12 EASTERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

v.

15 DANIEL SALAZAR,

16 Defendant.

CASE NO. 1:20-CR-00025 NONE-SKO

17 STIPULATION REGARDING EXCLUDABLE
18 TIME PERIODS UNDER SPEEDY TRIAL ACT;
19 FINDINGS AND ORDER

20 PROPOSED DATE: August 17, 2020

21 TIME: 1:00 p.m.

22 COURT: Hon. Sheila K. Oberto

23 This case is set for a status conference on May 18, 2020. On April 17, 2020, this Court issued
24 General Order 617, which suspends all jury trials in the Eastern District of California scheduled to
25 commence before June 15, 2020, and allows district judges to continue all criminal matters to a date
26 after June 1. This order and previous General Orders were entered to address public health concerns
27 related to COVID-19.

28 Although the General Orders address the district-wide health concern, the Supreme Court has
emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open-
endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner*
v. United States, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing").

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
4 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
5 the ends of justice served by taking such action outweigh the best interest of the public and the
6 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
7 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
8 ends of justice served by the granting of such continuance outweigh the best interests of the public and
9 the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7). Although
11 the Speedy Trial Act does not directly address continuances stemming from pandemics, natural
12 disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances.
13 For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St.
14 Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the
15 eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182
16 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001
17 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more
18 enduring, barrier to the prompt proceedings mandated by the statutory rules. In light of the societal
19 context created by the foregoing, this Court should consider the following case-specific facts in finding
20 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
21 (Local Code T4).¹ If continued, this Court should designate a new date for the status conference.
22 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
23 “specifically limited in time”).

24 **STIPULATION**

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, stipulate as follows:

27 _____
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1. By previous order, this matter was set for a status conference on May 18, 2020.

2. By this stipulation, the parties move to continue the status conference until August 17, 2020, and to exclude time between May 18, 2020, and August 17, 2020.

3. The parties stipulate, and request that the Court find the following:

4. a) Counsel for defendant desires additional time to consult with their client, to
5. review the current charges and conduct additional investigation and research related to the
6. charges, to discuss potential resolutions with their client, and to evaluate and potentially prepare
7. pretrial motions. In part this is because the government has continued its investigation of the
8. crimes, the government has provided initial and supplemental discovery, and counsel and the
9. defendant will benefit from additional time to consider this material. The parties are also in the
10. early stages of attempting to resolve the case without the need for a trial, but there will not be
11. sufficient clarity on that effort prior to the May 18, 2020, court date.

12. b) Counsel for defendant believes that failure to grant the above-requested
13. continuance would deny them the reasonable time necessary for effective preparation, taking into
14. account the exercise of due diligence.

15. c) The government does not object to the continuance and joins in the request.

16. d) In addition to the public health concerns cited by General Orders 611, 612 and
17. 617 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt
18. in this case because counsel or other relevant individuals have been encouraged to telework and
19. minimize personal contact to the greatest extent possible. It will be difficult to avoid personal
20. contact should the hearing proceed. For these reasons, the court encouraged on May 8, 2020, the
21. parties to enter this stipulation.

22. e) Based on the above-stated findings, the ends of justice are served by continuing
23. the case as requested and outweigh the interest of the public and the defendant in a trial within
24. the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of May 18, 2020, to August 17, 2020, inclusive, is deemed excludable under 18 U.S.C. § 3161(h)(7)(A), and (B)(iv), because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: May 13, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ David Gappa
David L. Gappa
Assistant United States Attorney

Dated: May 14, 2020

/s/ Matt Lemke
(authorized on 5/14/20)

Matt Lemke
Counsel for Defendant
DANIEL SALAZAR

FINDINGS AND ORDER

The court has reviewed and considered the stipulation that the parties filed on May 14, 2020.

Based on the reasons articulated in that filing, the court finds good cause to move the current status conference from May 18, 2020, to August 17, 2020, and to exclude time under the Speedy Trial Act under 18 U.S.C. § 3161(h)(7)(A), and (B)(iv), because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: May 14, 2020

181 Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE